No. 23-1141

In the
Supreme Court of the United States

SMITH & WESSON BRANDS, INC., et al.,
Petitioners,

v.

ESTADOS UNIDOS MEXICANOS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR *AMICUS CURIAE* NATIONAL SHOOTING SPORTS FOUNDATION, INC., IN SUPPORT OF PETITIONERS

LAWRENCE G. KEANE
SHELBY BAIRD SMITH
NATIONAL SHOOTING SPORTS FOUNDATION, INC.
400 N. Capitol Street, NW
Washington, DC 20001
(202) 220-1340

PAUL D. CLEMENT
ERIN E. MURPHY
Counsel of Record
MATTHEW D. ROWEN
NICHOLAS M. GALLAGHER*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com

* Supervised by principals of the firm who are members of the Virginia bar

Counsel for Amicus Curiae

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CORPORATE DISCLOSURE STATEMENT

The National Shooting Sports Foundation, Inc., certifies that it has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATEMENT OF INTEREST AND INTRODUCTION[1]

The National Shooting Sports Foundation, Inc. ("NSSF"), is the firearm industry's trade association; its over 10,000 members include federally licensed manufacturers, distributors, and retailers of firearms, ammunition, and related products. NSSF's interest in this case is manifest. The Protection of Lawful Commerce in Arms Act, Pub. L. No. 109-92, 119 Stat. 2095 (2005) ("PLCAA"), prohibits civil suits against federally licensed manufacturers and sellers of firearms seeking to make them pay to redress injuries caused by criminals' unlawful misuse of their lawful products. 15 U.S.C. §§7902(a), 7903(5)(A). While Congress might not have imagined that a foreign government would attempt to intervene on such a contentious domestic issue, Mexico's effort to use tort litigation to accomplish every policy aim of the anti-gun lobby in one fell swoop is exactly the kind of suit the PLCAA was enacted to prohibit. The First Circuit held otherwise only by flouting this Court's clear teachings as to both aiding-and-abetting doctrine and proximate cause. The decision below opens a gaping hole in the PLCAA and allows any foreign government with no counterpart to the Second Amendment to inject itself into hotly debated domestic issues where both the Framers and Congress have already spoken. It is also emblematic of a recent trend of efforts to skirt the PLCAA and use the threat of bankruptcy-inducing

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward its preparation or submission. *See* Sup. Ct. R. 37.6.

tort liability to destroy a lawful industry that is vital to the exercise of a fundamental constitutional right. This Court should reverse and put an end to this ill-conceived litigation once and for all.

BACKGROUND

A. Congress Enacted the PLCAA to Prevent Litigants from Using Novel Tort Theories to Destroy the Firearms Industry and the Second Amendment.

1. The Constitution "confer[s] an individual right to keep and bear arms." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 20 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008)); *see* U.S. Const. amend. II. And "the core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms." *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc). Nevertheless, in the 1990s and early 2000s, state and local governments began to invoke novel tort theories to try to hold licensed "manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended" liable "for the harm caused by the misuse of firearms by third parties, including criminals." 15 U.S.C. §7901(a)(3); *see id.* §7901(a)(4).

These government litigants invoked a wide array of theories, throwing anything at the wall to see what might stick. *See, e.g.*, *City of St. Louis v. Cernicek*, 145 S.W.3d 37, 38, 40 (Mo. Ct. App. 2004) (per curiam) (negligent marketing); *District of Columbia v. Beretta U.S.A. Corp.*, 847 A.2d 1127, 1131 (D.C. Ct. App. 2004) (negligent distribution); *Taurus Holdings, Inc. v. U.S. Fidelity & Guar. Co.*, 367 F.3d 1252, 1252-53 (11th

Cir. 2004) (deceptive trade practices); *Sills v. Smith & Wesson Corp.*, 2000 WL 33113806, at *7 (Del. Super. Ct. Dec. 1, 2000) (public nuisance). Some of the suits succeeded in stretching the common law far beyond its limits. *See, e.g.*, *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1143-47 (Ohio 2002); *James v. Arms Tech., Inc.*, 820 A.2d 27, 37-44, 46-47, 50-53 (N.J. Super. Ct. 2003); *City of Gary ex rel. King v. Smith & Wesson Corp.*, 801 N.E.2d 1222, 1231-32, 1241-42 (Ind. 2003). Others were correctly rejected as distorting settled law beyond recognition. *See, e.g.*, *City of Philadelphia v. Beretta U.S.A. Corp.*, 277 F.3d 415, 419 (3d Cir. 2002); *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1137, 1147-48 (Ill. 2004).

But the final tally told only part of the story. Had these suits been permitted to persist and proliferate, "[t]he legal fees alone" would have been "enough to bankrupt the industry." Sharon Walsh, *Gun Industry Views Accord as Dangerous Crack in Its Unity*, Wash. Post (Mar. 18, 2000), https://wapo.st/2Zcp5KS. Indeed, that was the whole point. Rather than focus on the criminals responsible for the violence they claimed was the basis of their sprawling suits, "municipal leaders pressed on" with litigation against members of the firearms industry "regardless of their chance of success, spending taxpayers' money in a war of attrition against the firearms industry." Recent Legislation, *Protection of Lawful Commerce in Arms Act*, 119 Harv. L. Rev. 1939, 1940 (2006).

2. It did not take long for Congress to recognize these lawsuits for what they were: a coordinated effort to destroy the firearms industry by saddling its members with crushing liability for the independent

acts of criminals. The lawsuits brought by these cities and states pressed "theories without foundation in hundreds of years of the common law and jurisprudence of the United States," elided fundamental principles of causation and due process, and threatened interstate comity by permitting one state (or its subdivisions) to penalize lawful conduct in another state. 15 U.S.C. §7901(a)(7)-(8). They did so, moreover, at substantial cost to individual rights, including the right to keep and bear arms, *id.* §7901(a)(2), (a)(6), and industry members' rights to pursue their trade consistent with the Constitution's privileges and immunities guarantee, *id.* §7901(a)(7).

Congress enacted the PLCAA in 2005 to put a stop to these efforts to use novel tort theories to destroy a lawful industry and the fundamental rights it facilitates. The PLCAA's first enumerated "purpose[]" is to "prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products" ("and their trade associations") for harm "caused by the criminal or unlawful misuse of firearm products" by third parties. *Id.* §7901(b)(1). To that end, the PLCAA broadly prohibits "any person," "including any governmental entity," from bringing a "civil action" against a federally licensed "manufacturer or seller" of firearms and related products seeking "relief[] resulting from the criminal or unlawful misuse of [such a] product by … a third party." *Id.* §§7902(a), 7903(3)-(6). That is not just a defense to liability; the PLCAA confers a substantive "immunity" from covered suits altogether. *In re Acad., Ltd.*, 625 S.W.3d 19, 33-34 (Tex. 2021); *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1142 (9th Cir. 2009).

Only six enumerated types of claims are not so barred. *See* 15 U.S.C. §7903(5)(A). These exceptions are limited to circumstances in which the industry member *itself* has engaged in some well-defined type of wrongful conduct, such as breach of contract or warranty, fraudulent transfer, negligent entrustment, or manufacturing or designing a defective product. None of the PLCAA's exceptions extends to actions seeking to make industry members pay to redress harms more directly caused by criminals' misconduct. And rightly so, as that sort of boundless liability, which treats the manufacture and sale of firearms as a tort rather than a necessary ingredient of a fundamental constitutional right, is precisely what the PLCAA was enacted to inter. *See id.* §7901(a)(7).

3. In the years following the PLCAA's enactment, state- and local-government litigants raised a host of challenges to the statute's constitutionality. All of them failed. *See, e.g.*, *Ileto*, 565 F.3d at 1139-40; *City of N.Y. v. Beretta U.S.A. Corp.*, 524 F.3d 384, 393-98 (2d Cir. 2008); *District of Columbia v. Beretta*, 940 A.2d 163, 172-82 (D.C. Ct. App. 2008); *Adames v. Sheahan*, 909 N.E.2d 742, 765 (Ill. 2009); *Delana v. CED Sales, Inc.*, 486 S.W.3d 316, 323-24 (Mo. 2016) (en banc). These government litigants' efforts to skirt the PLCAA's prohibition on "qualified civil liability actions" were equally fruitless. *See, e.g.*, *Delana*, 486 S.W.3d at 320-21 (rejecting argument that "criminal or unlawful misuse of a [firearm]" must be *sole* cause of injury to come within terms of §7903(5)(A)).

A third front in the campaign against the PLCAA focused on one of the statute's exceptions, the so-called "predicate exception." Under that provision, the

PLCAA's general immunity does not extend to suits "in which a manufacturer or seller of a [firearm product] knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. §7903(5)(A)(iii). In the years following the PLCAA's enactment, a number of state and municipal litigants tried to leverage this exception to revive the very unprecedented tort-law actions Congress passed the PLCAA to stamp out, on the theory that the exception exempts tort claims so long as a state codifies its tort law into a statute.

Those efforts failed too. As courts recognized, the problem Congress had with the pre-PLCAA tort suits was not that they were common-law suits. (Some of them invoked statutes. *See, e.g.*, *Ileto v. Glock, Inc.*, 349 F.3d 1191 (9th Cir. 2003).) The problem was that the sprawling suits attempted to "expand civil liability" well beyond its traditional moorings, constituting an "abuse of the legal system." 15 U.S.C. §7901(a)(6)-(7). Congress thus opted "[t]o prohibit [such] causes of action" entirely, without regard to whether they are brought pursuant to tort law or a statute codifying it. *Id.* §7901(b)(1).

That is why, for instance, the Ninth Circuit held in *Ileto* that California's codification of "general tort theories" in its civil code did not save claims premised on negligence and nuisance statutes "subject to the same 'judicial evolution' as ordinary common-law claims in jurisdictions that have not codified common law." 565 F.3d at 1135-36. It is also why the District of Columbia's highest court held that a D.C. law making industry members "'strictly liable in tort' for

… injuries resulting from the discharge of an assault weapon" they made or sold could not serve as a predicate statute, as it "merely" "impose[d] a duty to pay compensation" if "a person is … injured by the discharge of an assault weapon," and thus is no different from the sprawling claims Congress set out to inter. *Beretta*, 940 A.2d at 167, 170-73. As the Second Circuit put it in rejecting a similar effort to use New York State's general criminal nuisance statute to make law-abiding members of the firearms industry pay for the crimes of others, interpreting the predicate exception to allow the very same theories that Congress enacted the PLCAA to prohibit would "allow the predicate exception to swallow the statute." *City of N.Y.*, 524 F.3d at 403.

B. Mexico's Lawsuit Implicates All of the Concerns Motivating the PLCAA, and the Additional Concern of a Foreign Sovereign Seeking to Resolve Almost Every Major Firearms-Policy Debate in America via Litigation.

In 2022, Mexico filed this extraordinary lawsuit against a vast array of firearms industry members, seeking to inject itself into hotly debated domestic issues and accomplish exactly what the PLCAA was enacted to prevent—namely, subjecting federally licensed manufacturers and sellers of firearms and related products to crushing liability just for manufacturing and selling lawful products. Mexico has asserted a veritable smorgasbord of claims, including negligence, negligence per se, gross negligence, public nuisance, design defect, and violations of the Connecticut Unfair Trade Practices

Act and the Massachusetts Consumer Protection Act. Indeed, Mexico's 560-paragraph complaint is a compendium of every priority of America's anti-gun lobby, effectively seeking to resolve all these contentious issues—currently subject to passionate debates in Congress, statehouses, and courts throughout the Nation—via private tort litigation brought by a foreign government.

Much of Mexico's complaint is focused on trying to impose a de facto ban on certain firearms and feeding devices via litigation. For example, the complaint is predicated in significant part on allegations that the rise in Mexico's homicide rate is correlated to the manufacture and sale of so-called "assault weapons" (by which it means modern semiautomatic rifles) and "large-capacity magazines" (by which it means magazines that accept more than ten rounds of ammunition). *See* Pet.App.10a-11a, 83a-84a, 94a-96a, 104a, 122a-123a, 132a, 134a, 139a, 160a-66a (¶¶12-14, 245(4), 282, 288, 314-15, 317, 337, 369e, 369r, 375, 440-45). In Mexico's view, these ubiquitous firearms and magazines should not be sold to civilians at all.

To call that position controversial would be an understatement in the extreme. While the suit may reflect the policy preferences of a foreign sovereign, it bears little resemblance to the way politically accountable actors in this country have resolved those issues. Some states have banned some or all of these

common firearms[2] and magazines[3], but most have not. And states that have enacted such bans have been embroiled in litigation over their constitutionality for the better part of a decade.

As for federal law, Congress briefly banned a similar set of rifles and magazines in 1994 (before this Court recognized in *Heller* that the Second Amendment protects an individual right), but the law was sufficiently controversial even then that it included a sunset provision, and Congress let the ban expire in 2004 after a congressionally mandated study by the Department of Justice revealed that it had produced "no discernible reduction" in firearms violence. Christopher S. Koper et al., *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, Rep. to the Nat'l Inst. of Just., U.S. Dep't of Just. 96 (2004), https://bit.ly/3wUdGRE. While some domestic politicians and activists have repeatedly

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[2] *See* Cal. Penal Code §§30605, 30515; Conn. Gen. Stat. §§53-202c(a), 53-202a; 11 Del. Code §§1466(a), 1465; Haw. Rev. Stat. §134-8; 720 Ill. Comp. Stat. 5/24-1, 5/24-1.9; Md. Code, Crim. Law §§4-303, 4-301; Mass. Gen. Laws ch. 140, §131M; N.J.S. §§2C:39-5(f), 2C:39-1(w); N.Y. Penal Law §§265.02(7), 265.10, 265.00(22); Wash. Rev. Code §9.41.390; D.C. Code §§7-2502.02(a)(6), 7-2501.01(3)(A).

[3] *See* Cal. Penal Code §§16350, 16740, 16890, 32310-32450; Conn. Gen. Stat. §53202w; Haw. Rev. Stat. §134-8(c); 720 Ill. Comp. Stat. 5/24-1.10; Md. Code, Crim. Law §4-305; Mass. Gen. Laws ch. 140, §§121, 131(a); N.J.S. §2C:39-1(y); 2022 Or. Ballot Measure 114, §11; R.I. Gen. Laws §§11-47.1-2, 11-47.1-3(a); 13 Vt. Stat. §4021; Wash. Rev. Code §§9.41.370, 9.41.010(25); D.C. Code §§7-2506.01(b)-(c); 7-2507.06(a)(4); *see also* Colo. Rev. Stat. §18-12-301(2)(a); 11 Del. Code §1469(a).

proposed reinstating that short-lived ban over the 20 years since, their efforts have not succeeded.[4]

Mexico also seeks to hold industry members liable for having manufactured and sold bump stocks, *see* Pet.App.97a, 102a (¶¶290b, 309c)—even though this Court concluded just this past Term that such manufacturing and sales do not violate federal law. *See Garland v. Cargill*, 602 U.S. 406 (2024). Congress has not banned bump stocks, and while some states have,[5] others have not.[6] Yet in Mexico's view, it is

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[4] *See, e.g.*, Alexander Bolton, *Senate Republicans Block Assault Weapons Ban, Background Checks Bill*, The Hill (Dec. 6, 2023), https://bit.ly/3OkthUE; *see also Minnesota: Governor Tim Walz Signs Anti-Gun Bill Into Law*, NRA-ILA (May 31, 2024), https://bit.ly/3Zi2PRW (noting the defeat of an assault-weapons ban); Laura Vozzella, *Ban on Assault Weapon Sales Dies in Va. Senate Committee*, Wash. Post (Feb. 17, 2020), https://wapo.st/3UQoePv; Bente Birkeland, *A Bill to Ban the Sale of 'Assault Weapons' in Colorado Has Reached the End of Its Road*, CPR News (May 6, 2024), https://bit.ly/4151Sxs.

[5] Sixteen states and the District of Columbia have enacted a version of such a ban. *See* Cal. Penal Code §32900; Conn. Gen. Stat. §53-206g; 11 Del. Code §1444(a)(6); Fla. Stat. §790.222; Haw. Rev. Stat. §134-8.5; Iowa Code §724.29; 720 Ill. Comp. Stat. 5/24-1(a)(14); Md. Code, Crim. Law §4-305.1(a); *id.* §4-301(m); 2024 Mass. Legis. Serv. ch.135, §115; Minn. Stat. §609.67(1)(d); Nev. Rev. Stat. §202.274; N.J.S. §2C:39-3(*l*); N.Y. Penal Law §§265.01-c, 265.00(26); R.I. Gen. Laws §11-47-8(d); 13 Vt. Stat. §4022; Va. Code §18.2-308.5:1; Wash. Rev. Code §9.41.190(1); D.C. Code §§22-4501(1A), -4514(a).

[6] Other states have recently rejected attempts to ban bump stocks. *See* Caitlin Yilek, *GOP Senator Blocks Democratic Bill to Ban Bump Stocks After Supreme Court Ruling*, CBS News (June 18, 2024), https://bit.ly/4eFxZam; John Cole, *Gun Safety Bills Fail in Pa. House by Razor Thin Margin*, Pa. Cap.-Star (May 7,

open for a foreign sovereign to impose such a ban throughout the entire United States via industry-wide tort liability.

Mexico would not stop there. Mexico seeks to impose on manufacturers a tort-law duty to make "affirmative design safeguards [that] include, but are not limited to, personalized or authorized-user features, such as internal locks or 'smart gun' technology, that inhibit all but a gun's authorized user from discharging it." Pet.App.39a (¶99); *see* Pet.App.40a, 129a (¶¶101-02, 359). While Mexico claims that these features "have been technologically feasible for many years," Pet.App.39a (¶99), the paltry three state laws that even contemplate such a mandate have never taken effect—precisely because even those outlier states have not found such technology presently feasible. *See* N.J.S. §2C:58-2.10(a); Mass. Gen. Laws ch. 140, §131K; Md. Code, Pub. Safety §5-132; *cf., e.g.*, Champe Barton, *New Jersey's Effort to Pave the Way for Smart Guns Hits Another Bump*, The Trace (May 31, 2023), https://bit.ly/490OtbL; Jon Stokes, *Will Smart Guns Make Us Less Safe?*, L.A. Times (Jan 17, 2016) https://bit.ly/4g0Cnl9. By seeking to mandate infeasible technology, Mexico would effectively ban the sale of guns north of its borders entirely.

2024), https://bit.ly/40SpPrX; Steven Mistler & Kevin Miller, *Maine Senate Fails to Override Gov. Mills' Veto of Bump Stock Ban*, Me. Pub. Radio (May 10, 2024), https://bit.ly/40Txsyn; Jordan Buie, *Bill to Ban Bump Stocks in Tennessee Fails in Legislature*, The Tennessean (Apr. 3, 2018), https://tinyurl.com/yc6kxt7w.

Mexico would go further still and seek to impose industry-wide rules on *how* firearms can be sold and marketed. For example, Mexico seeks to hold industry members liable for "bulk, multiple, and repeat" sales of firearms and/or feeding devices, *see* Pet.App.38a, 44a, 71a, 79-80a, 86-88a, 104a (¶¶96f, 118, 206, 230, 251-57, 316)—even though only a handful of states impose any restrictions on how frequently someone may purchase a firearm,[7] and some of those laws have been held unconstitutional.[8] Mexico seeks to hold industry members liable for marketing their lawful products in ways that may make them "attractive" to criminals, *see* Pet.App.9a, 41a, 105a-121a, 125a-127a (¶¶9, 104-05, 321-31, 341-52)—modeling outlier state laws that have been held to violate the First Amendment wholly apart from Second Amendment concerns.[9] And Mexico seeks not only to "requir[e] that purchasers show multiple forms of state identification beyond those necessitated by federal or state law," Pet.App.37a (¶96e), but to permit the sale of firearms only to those who can demonstrate a

[7] *See* Cal. Penal Code §§27535, 27540(f) (prohibition on purchasing more than one firearm in every 30-day period); Md. Code, Pub. Safety §5-128(b) (same); N.J.S. §2C:58-3(*i*) (same, as to handguns); Va. Code §18.2-308.2:2(R) (same, as to handguns); Conn. Gen. Stat. §29-33(f) (prohibition on purchasing more than three handgun in every 30-day period).

[8] *See Nguyen v. Bonta*, 2024 WL 1057241 (S.D. Cal. Mar. 11, 2024), *appeal filed*, No. 24-2036 (9th Cir. argued Aug. 14, 2024); Compl., *Struck v. Platkin*, No. 3:24-cv-9479 (D.N.J. filed Sept. 26, 2024); Compl., *Benton v. Platkin*, No. 1:24-cv-7098 (D.N.J. filed Jun. 18, 2024).

[9] *Junior Sports Mags. Inc. v. Bonta*, 80 F.4th 1109 (9th Cir. 2023).

"legitimate need" for one, Pet.App.104a (¶315)—essentially tracking the very approach this Court held unconstitutional in *Bruen*, *see* 597 U.S. at 11.

In short, just like the lawsuits that Congress enacted the PLCAA to foreclose, Mexico seeks to impose via sweeping industry-wide tort liability what the anti-gun lobby has not been able to accomplish via the political process—namely, nationwide rules that would radically reshape the industry and drive many if not most members out of business. That is no coincidence. Mexico's counsel was the architect of many of the lawsuits that were brought before the PLCAA. *See* Vincent Xu, *Jonathan Lowy Discusses the Impact of Tort Litigation in the Fight Against Gun Violence*, Vand. U. L. Sch. (Oct. 14, 2024), https://perma.cc/ZDF3-7KCU. And he has been quite candid that this lawsuit is yet another effort to work "outside" the "constrain[ts]" of "U.S. politics," the Second Amendment, and this Court's decisions in *Heller* and *Bruen*, which (in his view) "were wrongly decided and need to be reversed." Chip Brownlee, *Could International Pressure Ultimately Strengthen U.S. Gun Laws?*, The Trace (Jan. 16, 2024), https://perma.cc/UH3Q-CSYR (interview with counsel for Mexico Jonathan Lowy).

Indeed, Mexico repeatedly invokes pre-PLCAA rulings that were repudiated even *before* Congress enacted the PLCAA. *See* Pet.App.13a, 46-48a, 50a, 83a, 184-185a (¶¶17, 124-25, 127, 132, 241, 512) (invoking *Hamilton v. Accu-Tek*, 62 F.Supp.2d 802 (E.D.N.Y. 1999), and *Hamilton v. Beretta U.S.A. Corp.*, 750 N.E.2d 1055 (N.Y. 2001), both of which were repudiated by *Hamilton v. Beretta U.S.A. Corp.*,

750 N.E.2d 1055 (N.Y. 2001), and *People ex rel. Spitzer v. Sturm, Ruger & Co.*, 761 N.Y.S.2d 192 (N.Y. App. Div. 2003)). And while Mexico touts those decisions repeatedly even though they were the inspiration for the "maverick judicial officer[s]" admonished in the PLCAA's findings, 15 U.S.C. §7901(a)(7), its complaint mentions the PLCAA only once—when it remarkably seeks to hold the firearms industry liable for lobbying for its passage. *See* Pet.App.13a (¶19); *see also* Pet.App.14-15a (¶¶22-23). That all of this is done by a foreign sovereign might be beyond Congress' wildest imagining. Nonetheless, the suit—in addition to being an affront to bedrock principles of territorial sovereignty—is a poster child for the kind of litigation the PLCAA was designed to eliminate.

SUMMARY OF ARGUMENT

Mexico's lawsuit is the epitome of a case precluded by the PLCAA—unsurprisingly, since its allegations are a veritable cut-and-paste job drawn from the 1990s and early 2000s suits that Congress enacted the PLCAA to foreclose. The First Circuit nonetheless green-lighted Mexico's extraordinary suit on the theory that it falls within the PLCAA's predicate exception. But that conclusion rests on an expansive and egregiously wrong conception of aiding-and-abetting liability that is squarely foreclosed by both the PLCAA and this Court's recent decision in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023).

The PLCAA's predicate exception applies only to an action for a knowing violation of a predicate statute that proximately caused the plaintiffs' injuries. 15 U.S.C. §7903(5)(A)(iii). It thus exempts actions for injuries proximately caused by things like falsifying

records of a firearms transaction or knowingly selling to a straw-purchaser. But it does not exempt lawsuits that just repackage efforts to hold industry members liable for the misconduct of third parties under the guise of some attenuated connection to a statute. After all, courts cannot "allow the predicate exception to swallow the statute." *City of N.Y.*, 524 F.3d at 403. Yet that is precisely what the decision below does.

To the extent Mexico's allegations are tethered to any statutory violation at all—as opposed to bare disagreements with this Nation's policy choices and this Court's decisions—its complaint seems to be that petitioners' lawful sales of their lawful products to licensed distributors that in turn sell to those products to licensed dealers amount to "aid[ing] and abet[ting]" certain "sales" allegedly made "in knowing violation of several state and federal statutes" (though which ones Mexico never says). Pet.App.299a-300a.

That theory is foreclosed by *Taamneh*, which held that aiding-and-abetting liability exists only when a defendant "*consciously and culpably* 'participate[d]' in a wrongful act so as to help 'make it succeed.'" 598 U.S. at 493-94 (alteration in original) (emphasis added). Claiming that licensed firearms industry members aided and abetted those who misuse their lawfully manufactured products thus requires plausibly alleging not only that they knew that someone, somewhere, might misuse those products, but that there is "very good reason to think that [they] were *consciously trying to help*" retailers aid cartels "or otherwise 'participate in'" their allegedly unlawful acts. *Id.* at 497, 500 (emphasis added). "The allegations here fall short of that showing," "run

roughshod over the typical limits on tort liability[,] and take aiding and abetting far beyond its essential culpability moorings." *Id.* at 497, 503. For largely similar reasons, they do not satisfy the PLCAA's proximate-cause requirement either, as Mexico's exceedingly strained eight-step chain of causality comes nowhere near satisfying the traditional standards for proximate cause.

Unfortunately, Mexico is not alone in its blatant efforts to skirt the PLCAA. Over the past few years, a handful of states have embarked on a project to protest this Court's Second Amendment jurisprudence and Congress' PLCAA legislation alike by enacting laws designed to try to pierce the immunity the latter confers. These states have not been shy that their goal is to "right the wrong" they believe Congress committed when it enacted the PLCAA. Gov. Andrew M. Cuomo, *Governor Cuomo Signs First-in-the-Nation Gun Violence Disaster Emergency to Build a Safer New York* at 35:00-38:15, YouTube (July 6, 2021), https://bit.ly/3UyZoSx. But, if anything, the need for the PLCAA is all the more acute now that this Court has confirmed that the Second Amendment protects an individual and fundamental right. The Court should take this opportunity to try to curb the growing tide of efforts to litigate that right out of existence through the backdoor of broadscale attacks on the (already highly regulated) industry that makes its exercise feasible.

ARGUMENT

I. The PLCAA Squarely Prohibits This Suit.

1. This case is both an extraordinary effort by a foreign sovereign to inject itself into a raft of hotly

debated domestic policy disputes and the epitome of the type of lawsuit Congress enacted the PLCAA to foreclose. Mexico does not allege that petitioners secretly partnered with cartels or intentionally sold to sicarios. It claims that they indirectly contributed to cartels' criminal misconduct by: manufacturing and selling lawful firearms and related products (e.g., so-called "assault weapons" like the AR-15 and so-called "large-capacity magazines"); marketing their lawful products in ways that make them "attractive"; failing to develop so-called "smart gun" technology; selling to people who (in Mexico's eyes) lack a "legitimate need" for a firearm; and more. *See* pp.7-14, *supra*. All of that lawful business activity in this country, Mexico claims, constitutes "aiding and abetting" the illegal diversion of firearms by certain dealers to cartels and has proximately caused cartel violence and the attendant fiscal harms for which Mexico seeks massive recompense.[10]

Those allegations squarely implicate the PLCAA. Indeed, Mexico's allegations are carbon-copies of "cases like *Ileto* and *City of Chicago*," the very suits that "Congress was primarily concerned with" in enacting the PLCAA. *Adames v. Sheahan*, 880 N.E.2d 559, 586 (Ill. Ct. App. 2007). The *Ileto* plaintiffs alleged that manufacturers "intentionally produce,

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[10] Mexico also alleged that by selling lawful semi-automatic firearms despite knowing they can be modified to fire automatically, petitioners knowingly violated the Gun Control Act's prohibition on selling "machinegun[s]" without specific authorization, *see* 18 U.S.C. §922(b)(4). The First Circuit correctly rejected that argument, Pet.App.306a-309a, which is squarely foreclosed by *Staples v. United States*, 511 U.S. 600 (1994).

market, distribute, and sell more firearms than the legitimate market demands in order to take advantage of re-sales to distributors that they know or should know will, in turn, sell to illegal buyers." 565 F.3d at 1130. The *City of Chicago* plaintiffs likewise claimed that manufacturers "sell firearms even when they know or should know that the firearms will be used … illegally in Chicago." 821 N.E.2d at 1107. There is no daylight between the allegations in those cases and Mexico's allegations here. *Compare, e.g.*, Pet.App.305a (Mexico "does not allege defendants' awareness of any particular unlawful sale"), *with, e.g.*, *City of Chicago*, 821 N.E.2d at 1124 (Chicago leveled "no specific factual allegations of actual violations of applicable statutes … by any … named defendants"). None of that is a coincidence; those pre-PLCAA lawsuits were crafted by the same lawyer who crafted Mexico's attempt to end-run the PLCAA here.

So it should come as no surprise that the PLCAA squarely prohibits Mexico's suit. Under the PLCAA, no "civil action" against a federally licensed firearm "manufacturer or seller" seeking "damages, … or other relief, resulting from the … unlawful misuse of a [firearm] by … a third party," may "be brought" "by any person" ("including any governmental entity") "in any Federal or State court." 15 U.S.C. §§7902(a), 7903(3), (5)(A). This case indisputably ticks every box. Even Mexico has never seriously argued otherwise, save for pressing the borderline-frivolous theory that the sovereign government of the tenth-largest country in the world is somehow not "any governmental entity."

2. The First Circuit nonetheless green-lighted this sprawling tort suit, on the theory that it falls within the PLCAA's predicate exception. *See* 15 U.S.C. §7903(5)(A)(iii). That conclusion, which relies on an expansive conception of aiding-and-abetting liability, is egregiously wrong, puts the PLCAA at war with itself, and squarely contradicts this Court's decision in *Taamneh*, 598 U.S. 471.

The predicate exception is narrow. It provides that the PLCAA's general immunity does not extend to claims that "a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought." 15 U.S.C. §7903(5)(A)(iii). By requiring a (1) knowing (2) violation of a predicate statute (3) that proximately caused the plaintiffs' injuries, §7903(5)(A)(iii) exempts actions for injuries proximately caused by things like falsifying records of a firearms transaction or selling a firearm "knowing, or having reasonable cause to believe, that the actual buyer … was prohibited from possessing" it. *Id.* It does not exempt lawsuits that just repackage efforts to hold industry members liable for the misconduct of third parties under the guise of some attenuated connection to a statute. *See, e.g.*, *Ileto*, 565 F.3d at 1134-42; *City of N.Y.*, 524 F.3d at 399-403; *Beretta*, 940 A.2d at 167, 170-73. After all, courts cannot "allow the predicate exception to swallow the statute." *City of N.Y.*, 524 F.3d at 403.

Yet that is precisely what the decision below has done. Mexico's allegations are vague and amorphous, covering everything from disapproval of firearms and

feeding devices that are perfectly lawful in most of the country to disagreement with this Court's holding that people need not demonstrate some special need to exercise their fundamental right to keep and carry firearms. *Compare, e.g.*, Pet.App.104a (¶315), *with Bruen*, 597 U.S. at 70-71. But to the extent Mexico's allegations are tethered to any statutory violation, its complaint seems to be that petitioners' lawful sales of their lawful products to distributors that in turn sell those products to dealers amount to "aid[ing] and abet[ting]" certain *dealers* who allegedly make "widespread sales … in knowing violation of several state and federal statutes" (which ones, Mexico never says). Pet.App.299a-300a. That is not even a viable aiding-and-abetting claim, let alone one that meets the PLCAA's demanding predicate exception.

a. Mexico's aiding-and-abetting theory defies this Court's recent decision in *Taamneh*. "[T]he basic 'view of culpability' that animates [aiding-and-abetting] doctrine is straightforward: '[A] person may be responsible for a crime he has not personally carried out if he helps another to complete its commission.'" *Taamneh*, 598 U.S. at 488 (final alteration in original) (quoting *Rosemond v. United States*, 572 U.S. 65, 70 (2014)). But "the concept of 'helping' in the commission of a crime—or a tort—has never been boundless," *id.*, and "courts have long recognized the need to cabin aiding-and-abetting liability to cases of truly culpable conduct," *id.* at 489. Thus, only acts that are "'calculated and intended to produce'" another's unlawful conduct "warrant liability for the resulting tort." *Id.* at 491.

That rule carries particular force when it comes to efforts to impose aiding-and-ability liability on lawful businesses for the misuse of their products or services by third parties. As *Taamneh* made pellucidly clear, continuing to sell products or services despite general awareness that people can and sometimes do misuse them does not suffice to give rise to aiding-and-abetting liability. Otherwise, "ordinary merchants could become liable for any misuse of their goods and services, no matter how attenuated their relationship with the wrongdoer." *Id.* Because "aiding and abetting is inherently a rule of secondary liability for specific wrongful acts," it applies only when a defendant "*consciously and culpably* 'participate[d]' in a wrongful act so as to help 'make it succeed.'" *Id.* at 493-94 (alteration in original; emphasis added).

What that means here is simple. "[B]ecause [it is] trying to hold defendants liable for" *retailers*' alleged violations of state and federal law, Mexico "must plausibly allege that defendants aided and abetted" retailers in trafficking firearms to cartels. *Id.* at 497. That, in turn, requires plausibly alleging not only (1) that petitioners "knew they were playing some sort of role in [that alleged] enterprise" simply by virtue of manufacturing and selling lawful products that are sometimes illegally trafficked, but also (2) a "very good reason to think that defendants were *consciously trying to help*" retailers aid cartels "or otherwise 'participate in'" their allegedly unlawful acts. *Id.* at 497, 500 (emphasis added).

"The allegations here fall [well] short of that showing[.]" *Id.* at 497. Mexico does not allege any sort of direct and culpable connection between petitioners

and dealers who allegedly divert their products to cartels. It simply alleges that petitioners have contributed to the unlawful acts of others because they sell lawful products to licensed distributors while knowing that those distributors might re-sell them to some licensed retailers that Mexico claims do not do enough to prevent cartels from acquiring them.[11] At absolute most, Mexico alleges that petitioners are "largely indifferent" to what happens to their (lawful) products after they (lawfully) sell them to distributors who (lawfully) re-sell them to retailers. *See id.* at 500. While that is patently false, *see infra* Part III, *Taamneh* makes crystal clear that would still not be enough. The First Circuit's contrary conclusion "run[s] roughshod over the typical limits on tort liability and take[s] aiding and abetting far beyond its essential culpability moorings." *Taamneh*, 598 U.S. at 503.

b. Even if Mexico had plausibly alleged a viable theory of aiding and abetting, it is not one that could satisfy the strictures of the PLCAA's predicate exception. The predicate exception applies only when

[11] The First Circuit tried to bridge the gap between petitioners' conduct and the dealers' alleged violations by stating that Mexico alleges that petitioners sold to dealers they knew were trafficking firearms to cartels. *E.g.*, Pet.App.312a. But, as petitioners have explained, that is a sleight of hand. Pet.29 n.3; *see* Pet'rs.Br.12, 47-50. Nowhere does Mexico allege that any of the defendants sold anything to any particular retailer (or anyone else, for that matter) that they knew, or even should have known, worked with cartels or trafficked firearms. Mexico just tries to *infer* knowledge from petitioners' general awareness that cartel members manage to obtain firearms—which is precisely what *Taamneh* forecloses.

a "knowing" violation of a predicate statute was "a proximate cause of the harm for which relief is sought." 15 U.S.C. §7903(5)(A)(iii). "[P]roximate cause" is as familiar as a common-law term gets, *see CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692-93 (2011), and it requires more than just foreseeability, *e.g.*, *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 202 (2017). *Cf. Jam v. Int'l Fin. Corp.*, 586 U.S. 199, 211 (2019) (Courts "ordinarily presume that 'Congress intends to incorporate the well-settled meaning of the common-law terms it uses.'"). There must be a "direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). That direct relationship is especially critical here, as one of the most pernicious aspects of the pre-PLCAA tort suits Congress sought to stamp out was their efforts to stretch traditional proximate cause principles well past their breaking point, in service of holding industry members liable for the independent acts of third parties. *See* 15 U.S.C. §7901(a)(7); Pet'rs.Br.24.

That is precisely what Mexico seeks to do here. By Mexico's telling, firearms manufacturers should be held liable for injuries the Mexican government suffers on account of crimes committed by cartels in Mexico because (1) petitioners lawfully sell firearms to federally licensed wholesale distributors, (2) those wholesalers lawfully sell those firearms to federally licensed retail dealers, (3) a subset of those dealers sell firearms to individuals who intend to put them to ill use, (4) some of those individuals smuggle some of those arms into Mexico in violation of both U.S. and Mexican law, (5) cartel members unlawfully obtain some of those smuggled arms, (6) cartel members use

those arms to commit violent crimes in Mexico, (7) those violent crimes injure people and property in Mexico, and (8) the Mexican government ultimately suffers derivative fiscal injury. *See* Pet'rs.Br.8, 22. Just articulating that daisy chain of events is exhausting. More to the point, it does not establish anything that looks remotely like proximate cause. "'[F]or want of a nail, a kingdom was lost' is a commentary on fate, not the statement of a major cause of action against a blacksmith." *Holmes*, 503 U.S. at 287 (Scalia, J., concurring).

Indeed, not even the First Circuit could bring itself to embrace the claim that the lawful manufacture and lawful sale of lawful products in the United States by federally licensed businesses has a "direct relation" to narco-terrorist activity in Mexico. The court instead imagined a "notional[]" scenario in which manufacturers, distributors, retailers, straw purchasers, and Mexican cartel members form a line on the border handing firearms to one another, and then summarily declared "this scenario … fairly analogous to what Mexico alleges." Pet.App.301a-302a. But that imaginary line at the border collapses all the gaps in the actual chain of causation that Mexico alleges, and those gaps are precisely what make Mexico's actual allegations the very antithesis of proximate cause.

What Mexico actually alleges is that petitioners should be held responsible for fiscal injuries to the Mexican government because, e.g., they lawfully manufacture and sell firearms to federally licensed wholesalers who are (at least) two steps removed from any potential illegal transaction, and market lawful

features of their products to law-abiding Americans, while knowing generally that cartel members in Mexico sometimes manage to obtain them. That is about as far as it gets from allegations of standing on the border directly participating in actual straw purchases. Mexico cannot establish proximate cause by invoking hypotheticals that it did not and could not plausibly allege—especially when even those hypothetical allegations would still leave petitioners several steps away from *Mexico*'s alleged injuries. *See, e.g.*, *Hemi Grp., LLC v. City of N.Y.*, 559 U.S. 1, 9-12 (2010).

That common-sense conclusion would follow even without the PLCAA. As the Third Circuit explained in an opinion joined by then-Judge Alito that affirmed the dismissal of a suit remarkably similar to this one (albeit brought by Philadelphia rather than a foreign sovereign), the sheer number of "links that separate a manufacturer's sale of a gun to a licensee and the gun's arrival in the illegal market," the "long and tortuous" chain of causation the city alleged, the "derivative" nature of the injuries for which it sought redress, the intervening criminal acts of independent wrongdoers, and the convoluted theory of damages the city pressed all made clear that traditional proximate cause principles defeated the city's attempt to make licensed firearm manufacturers pay for street crime. *City of Philadelphia v. Beretta U.S.A. Corp.*, 277 F.3d 415, 422-25 (3d Cir. 2002); *see also, e.g.*, *Spitzer*, 761 N.Y.S.2d at 202; *City of Chicago*, 821 N.E.2d at 1147-48.

But the intervening enactment of the PLCAA makes the First Circuit's contrary conclusion

inexplicable. If the PLCAA means anything, it means that government litigants and other plaintiffs cannot use tort litigation to make licensed industry members pay to redress harms caused by criminals (especially criminals *in another country*) simply by pleading that the industry members *surely must have known* that some of their products would wind up being misused. And that is doubly true for licensed industry members like petitioners who, in the First Circuit's own words, concededly lacked "awareness of any particular unlawful sale." Pet.App.305a. "Congress intended to preempt general tort law claims," full stop, *Ileto*, 565 F.3d at 1132-38, and nothing in the predicate exception allows the very same claims to be brought under the cloak of a third party's alleged statutory violations. The First Circuit's (mis)reading of the predicate exception puts the PLCAA at war with itself, allowing plaintiffs to sneak in through the back door the claims Congress tossed out the front.

II. Mexico's Suit Is Part And Parcel Of A Recent Trend Of Trying To Evade The PLCAA And Vitiate Second Amendment Rights.

In any other context, it would be difficult to imagine such egregious defiance of Congress and this Court. But when it comes to firearms and the Second Amendment, defiance is en vogue. Although the prospect of a foreign sovereign intruding on a contentious domestic issue is extraordinary, Mexico is hardly alone in resisting the PLCAA and the fundamental constitutional right to which lawful commerce in arms is essential. In the wake of *Bruen*, legislators in many of the same states whose "may-issue" regimes *Bruen* invalidated have found it

politically expedient to protest—rather than abide by—this Court's reaffirmation of the right to keep and bear arms by imposing novel restrictions on that right and those who facilitate its exercise. And many of the same courts that defied *Heller* for a decade have been all too happy to join the protest.

The recent round of incursions on Americans' fundamental right to keep and bear arms have run the gamut, with states (and cities) restricting who may obtain and carry certain arms and banning some long-lawful arms altogether. Another gambit states have tried is passing legislation designed to try to pierce the immunity Congress conferred in the PLCAA. Eight states (and counting) have now enacted laws that unabashedly try to revive the very same negligence, nuisance, and strict-liability theories that drove Congress to enact the PLCAA. *See* Cal. Civ. Code §3273.51; Colo. Rev. Stat. §6-27-104; 10 Del. Code §3930; Haw. Rev. Stat. §134-102(b)(2); 815 Ill. Comp. Stat. 505/2BBBB; N.J.S. §2C:58-35(a); N.Y. Gen. Bus. Law §898-c; Wash. Rev. Code §7.48.330.

These states have not been shy about their aims. As one Governor put it, the goal is to "right the wrong" they believe Congress committed when it enacted the PLCAA and "reinstate[] the public nuisance liability for gun manufacturers" that these same states tried to impose before Congress intervened. Cuomo, *supra*, at at 35:00-38:15.

NSSF has sought to enjoin enforcement of many of these laws, which are clearly preempted by the PLCAA and unconstitutional to boot. To date, however, many of NSSF's challenges have been dismissed as premature, *see, e.g.*, *NSSF v. Att'y Gen.*

of N.J., 80 F.4th 215 (3d Cir. 2023); *NSSF v. Jennings*, 2023 WL 5835812 (D. Del. Sept. 8, 2023); *NSSF v. Lopez*, 2024 WL 1703105 (D. Haw. Apr. 19, 2024); *NSSF v. Ferguson*, 2024 WL 1040673 (E.D. Wash. Mar. 8, 2024)—even as municipalities have already begun using these laws to sue firearms industry members alleging that their (lawful and heavily regulated) manufacture, sale, and marketing of their lawful products is "unreasonable" and has contributed to the commission of violent crimes with guns.[12]

While the fate of those laws and lawsuits must await another day, their existence is all the more reason why the Court should take this opportunity to explicate clearly the meaning and protections of the PLCAA. As explained here and in petitioners' brief, Mexico's lawsuit implicates almost every hot-button issue in U.S. firearms policy and would leverage our court system to allow a foreign government to pretermit a range of debates currently underway in Congress and statehouses throughout the Nation. Rejecting that effort, and the First Circuit's decision rubber-stamping it, will send an unmistakable signal to cities, states, and lower courts intent on undermining the Second Amendment—which is exactly what Congress enacted the PLCAA to prevent.

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[12] *See, e.g.*, Compl., *Platkin v. RR Outdoors, LLC*, No. CUM-C-000037-24 (N.J. Super. Ct. filed Nov. 13, 2024); Compl., *Platkin v. Point Blank Guns & Ammo LLC*, No. MRS-C-000123-24 (N.J. Super. Ct. filed Nov. 13, 2024); Compl., *City of Chicago v. Glock, Inc.*, No. 2024CH02216 (Ill. Cir. Ct. filed Mar. 19, 2024); *Steur v. Glock*, No. 1:22-cv-3192 (E.D.N.Y. filed May 31, 2022); *City of Buffalo Files Lawsuit Against Firearms Companies*, City of Buffalo (Dec. 20, 2022), https://tinyurl.com/35vr8ymv.

There is also a deep irony in this recent wave of laws and lawsuits. Although Mexico consistently elides this reality, the vast majority of firearms that are used in crimes (on both sides of the border) were originally purchased legally. That is no coincidence; the firearms industry is making great efforts to stop straw purchasing and keep firearms out of the hands of those who should not have them. But manufacturers and sellers of lawful products cannot control what befalls their products miles or years away. The fact that criminals choose to steal and misuse firearms, while obviously lamentable, is no more reason to litigate the industry out of existence than the fact that some people drive drunk is a reason to impose a de facto ban on cars. Indeed, the firearms industry is not just "heavily regulated by Federal, State, and local laws," 15 U.S.C. §7901(a)(4); it is proactive, adopting and promoting a range of best practices designed to ensure that firearms do not fall into the wrong hands.

For instance, NSSF offers training for retailers and distributors on how best to protect their inventories, including step-by-step guides and recommendations for ensuring secured inventory. *See, e.g.*, NSSF Security and Compliance Team Members, *Protecting Your Firearm Business and the Public During a Crisis* (Mar. 19, 2020), https://bit.ly/3QKboQE. The industry also distributes free firearm-safety kits to customers; over 70 million locking devices have been included free of charge with the sale of new firearms since 1998. NSSF, *Project ChildSafe*, https://bit.ly/3VbUihz. And NSSF recently launched its "inaugural Gun Storage Check Week … to remind firearm owners to review their storage

practices with the goal of preventing unwanted access to their guns." Bill Brassard, *NSSF's 'Gun Storage Check Week' to Run June 1-7*, The Outdoor Wire (May 17, 2024), https://tinyurl.com/yxdpuu9s.

In addition, the industry actively "promotes … programs that are designed to keep firearms out of the hands who shouldn't have them[,] includ[ing] those who might be suffering a mental health crisis as well as prohibited individuals and unsupervised children." Joe Bartozzi, *Mental Health and Firearm Ownership*, NSSF (Oct. 6, 2020), https://bit.ly/4ba8BbP. NSSF works with the American Foundation for Suicide Prevention "to provide suicide prevention education to retailers, range owners and firearm owners," "help[ing] them recognize signs of suicide risk," providing resources when someone is in crisis, and offering education about and the means to store firearms securely "so that firearms are not accessible by those at risk of self-harm or harm of others." *Id.*

Particularly relevant here, the industry has long partnered with the ATF to "design[] an educational program to assist firearm retailers in the detection and possible deterrence of 'straw purchasers.'" ATF, *ATF Firearms Programs: Don't Lie for the Other Guy*, https://tinyurl.com/2mfzsp5w (last updated Apr. 26, 2018); *see also, e.g.*, Mary Boyte, *Campaign Launches in Jackson Metro to Curtail Illegal Gun Purchases*, Miss. Clarion Ledger (May 17, 2024), https://tinyurl.com/49ehdmy2 (discussing recent spate of "billboards, radio spots and social media posts informing audiences of the consequences of 'straw purchasing'"); Jhovani Carrillo, *Campaign Targeting 'Straw Purchases' of Guns Will Start To Pop Up*

Around Las Vegas Valley, KTNV (Jan. 25, 2024), https://bit.ly/4bFMtWw (similar). The "Don't Lie for the Other Guy" campaign aims to prevent the illegal straw purchase of firearms, including by offering "Retailer Tool Kit" to assist licensed retailers in recognizing and preventing straw purchases. NSSF, *Don't Lie Retailer Kit*, https://bit.ly/3wMVHRY (last visited May 22, 2024).

None of those is the action of an aider and abettor. To the contrary, the firearms industry has not hidden behind the PLCAA or buried its head in the sand. The industry continues to actively promote best practices for retailers and firearms owners and work hand-in-hand with law-enforcement agencies to prevent the illegal diversion and misuse of firearms. There is thus not only no excuse for the First Circuit's decision to sidestep the PLCAA, defy Congress' clear intent, and contradict this Court—there is no need for it.

CONCLUSION

This Court should reverse.

Respectfully submitted,

LAWRENCE G. KEANE
SHELBY BAIRD SMITH
NATIONAL SHOOTING
SPORTS FOUNDATION, INC.
400 N. Capitol Street, NW
Washington, DC 20001
(202) 220-1340

PAUL D. CLEMENT
ERIN E. MURPHY
Counsel of Record
MATTHEW D. ROWEN
NICHOLAS M. GALLAGHER*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com

* Supervised by principals of the firm who are members of the Virginia bar

Counsel for Amicus Curiae

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